



Alaska Native Health Board

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January 13, 2006

The Honorable Mike Leavitt
Secretary of Health and Human Service
Centers for Disease Control and Prevention
Division of Global Migration and Quarantine
ATTN: Q Rule Comments
1600 Clifton Road, NE (E03)
Atlanta, GA 30333

Dear Secretary Leavitt:

I am writing to provide comments on the proposed regulations on the Control of Communicable Diseases in response to the Notice of Proposed Rulemaking dated November 30, 2005. I submit these comments on behalf of the Alaska Native Health Board (ANHB) and our member organizations.

The proposed regulations contain a number of provisions expressly applicable to Indian tribes or Indian country. Many of these reflect a concern that measures taken to control communicable diseases may be effective within Indian reservations. ANHB commends the Department for giving, for the first time, special attention to the ways in which the quarantine regulations should be applied to Indian tribes and their lands. On behalf of the ANHB, I approve and urge the adoption of a number of these provisions, with some modifications, to reflect existing law.

Section 70.24 expressly recognizes the right of a tribal health authority to request that the Director, Center for Disease Control (CDC), take quarantine measures and other public health measures, including the issuance of a quarantine order. The proposed regulations do not define "tribal public health authority." I recommend that this term be defined as "the federally recognized governing body of an Indian tribe or a tribal organization which has been delegated by an Indian tribe or Indian tribes to act on its or their behalf in providing health services or taking other action with respect to health."

I note that a number of the regulations provide for the CDC to consult with Indian tribes or with the Indian Health Service Director prior to taking actions which affect Indian tribes or their members. ANHB is pleased that there is Alaska Native and Native

ALASKA NATIVE TRIBAL HEALTH CONSORTIUM
ALEUTIAN/PRIIBLOF ISLANDS ASSOCIATION
ARCTIC SLOPE NATIVE ASSOCIATION
BRISTOL BAY AREA HEALTH CORPORATION
CHUGACHMIUT
COPPER RIVER NATIVE ASSOCIATION
COUNCIL OF ATHABASCAN TRIBAL GOVERNMENTS
EASTERN ALEUTIAN TRIBES

KETCHIKAN INDIAN COMMUNITY
KODIAK AREA NATIVE ASSOCIATION
MANILAQ ASSOCIATION
METLAKATLA INDIAN COMMUNITY
MT. SANFORD TRIBAL CONSORTIUM
NATIVE VILLAGE OF EKLUTNA
NATIVE VILLAGE OF TYONEK
NINILCHIK TRADITIONAL COUNCIL

NORTON SOUND HEALTH CORPORATION
SELDOVIA VILLAGE TRIBE
SOUTHCENTRAL FOUNDATION
SOUTHEAST ALASKA REGIONAL HEALTH CONSORTIUM
TANANA CHIEFS CONFERENCE
YUKON-KUSKOKWIM HEALTH CORPORATION
VALDEZ NATIVE TRIBE

American involvement in providing for the health of our members and others residing in Indian country is recognized by the proposed regulations at least to this extent. However, I am concerned that some of the sections, as explained below, fail to give due regard to the sovereign authority of tribal governments or their statutory rights under the Indian Self-Determination and Education Assistance Act (ISDEAA).

The most significant example of this is section 70.25 which authorizes the CDC, when he or she determines that the measures undertaken by an Indian tribe are insufficient to prevent the spread of communicable disease, to take a series of enumerated measures "and other measures" to prevent the spread of disease. There is no requirement in this section for consultation with either the IHS Director or with the affected tribe. The Preamble to the proposed rule states that the CDC will "to the extent practicable" consult with the IHS Director prior to taking such actions and notify the IHS Director and the affected tribe once the action is taken. However, the actual regulation contains no such requirement.

While the proposed regulations include appeal procedures to permit an individual who is quarantined to request a hearing (see sections 70.20 and 70.31), no such appeal procedure is provided in the regulations in the case of action under section 20.25. On the other hand, sections 109 and 507 (a) (2) of the ISDEAA provide procedures under which the Secretary may reassume operation of a health program under the Indian Self-Determination and Education Assistance Act, with specific requirements as to the Secretary's obligation to satisfy the burden of proof that the statutory requirements permitting reassumption exist. While the Secretary's regulations permit emergency reassumptions in circumstances which may arguably be present under section 20.25 of the proposed quarantine regulations, an appeal and hearing are still assured under the ISDEAA.

I am concerned that the broad authority provided under the proposed regulations to the CDC, acting for the Secretary, to take a wide variety of actions in Indian country, including "other measures," may provide the CDC with authority to suspend or rescind a tribal contract to provide health services under the Indian Self-Determination and Education Assistance Act or to interfere with a tribe or tribal organization's performance of its contract with IHS in ways which are not permitted under the Indian Self-Determination and Education Assistance Act, itself. I recommend that the regulations specifically address this issue by adding the following to section 20.25:

In the case of any such determination or measures applied in Indian country a tribal health authority may request a hearing under section 70.20. No such measures shall include the rescission of a contract or self-governance agreement under the Indian Self-Determination and Education Assistance Act or the reassumption of programs administered by any tribe or tribal organization thereunder except in compliance with the Indian Self-Determination and Education Assistance Act.

In addition, section 70.27 authorizes the CDC, with the concurrence of the IHS Director, to take certain public health measures with respect to persons in Indian country. Consultation with the affected Indian tribe or Indian tribes is required, but no provision authorizes any appeal by the tribe from the CDC's action and the consent of the tribes is not required. This section also authorizes the CDC, with the concurrence of the IHS Director, to send employees and agents of a state into Indian country to enforce federal quarantine regulations. I recommend that, again, these provisions should be reconciled with the authority of Indian tribes and tribal organizations under Indian Self-Determination and Education Assistance Act and with tribal authority to provide for health matters involving their members. I proposed the following:

(e) In the case of any public health measure taken by the CDC under this section, any Indian tribe or tribal organization providing health services in the Indian country within which such measure is taken may request a hearing under the provisions of section 70.20. No such measure shall include the rescission of a contract or self-governance agreement under the Indian Self-Determination and Education Assistance Act or the reassumption of programs administered by any tribe or tribal organization thereunder, except in compliance with the Indian Self-Determination and Education Assistance Act.

In some areas of the country, Indian tribes or tribal organizations administer programs which are the principal source of health care in their area although the area is not within Indian country as defined in section 70.1. I recommend an additional provision to address such situations (including those in which the tribe operates a federal facility and those in which it operates a non-federal facility). The following language should be added to section 70.26:

(c) In the case of any federal facility owned by the United States but operated by an Indian tribe or tribal organization under the provisions of the Indian Self-Determination and Education Assistance Act or any non-federally owned health facility operated by an Indian tribe or tribal organization under the Indian Self-Determination and Education Assistance Act, the CDC shall notify the tribe or tribal organization operating the facility of any proposed public health measure or combination of measures it proposes to take prior to taking such measure or measures. No such measure shall include any action inconsistent with a contract or self-governance agreement under the Indian Self-Determination and Education Assistance Act or the rescission or reassumption of such contract or agreement except in compliance with the Indian Self-Determination and Education Assistance Act.

I appreciate the opportunity to submit these comments on behalf of the Alaska Native Health Board and our member organizations.

Sincerely,

A handwritten signature in cursive script that reads "Trudy Anderson". The signature is fluid and written in dark ink.

Trudy Anderson